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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/786,930	07/05/2001	Olof Ekdahl	GAMBRO-250	7950

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EXAMINER

LEE, SHUN K

ART UNIT	PAPER NUMBER
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2878

DATE MAILED: 03/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/786,930

Applicant(s)

EKDAHL ET AL.

Examiner

Shun Lee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-30 and 32 is/are rejected.
- 7) ☒ Claim(s) 31 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

2. In the remarks filed 31 December 2002 (second paragraph on pg. 3), applicant requested a copy of the Information Disclosure Statement (PTO form 1449) filed 12 March 2001. It is noted that a copy of the Information Disclosure Statement filed 12 March 2001 was enclosed with the Office Action mailed 19 July 2002. However in response to applicant's request, another copy of the Information Disclosure Statement filed 12 March 2001 is enclosed with this Office Action.

Claim Objections

3. Claims 15-29 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 15-29 depend from a cancelled claim and thus fails to further limit the subject matter of a previous claim.

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Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 15-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 15-29 recites the limitation "the apparatus" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claim 32 is rejected under 35 U.S.C. 102(b) as being anticipated by Jensen (US 4,366,384).

In regard to claim 32, it should be noted that the preamble has not been given patentable weight since the intended use of determining the presence of the fluid conduit at a predetermined location does not result in a structural difference between the claimed invention and the prior art (*i.e.*, a preamble reciting the purpose or intended use of the claimed invention must be evaluated to determine whether the recited purpose or intended use results in a structural difference between the claimed invention

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and the prior art; see MPEP 2111.02). Jensen discloses (Fig. 3 and 4) an apparatus comprising:

- (a) a light source (36) for generating radiated light in a direction towards a predetermined location, whereby when a fluid conduit (28) is present at said predetermined location said radiated light passes in a direction through said fluid conduit (28);
- (b) a first optical sensor (38) for detecting said radiated light passing through said fluid conduit (28); and
- (c) a second optical sensor (40) for detecting said radiated light which is reflected by said fluid conduit (28).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen (US 4,366,384) in view of Crouse *et al.* (US 4,884,065).

In regard to claim **30**, Jensen disclose (Figs. 3 and 4; column 1, line 43 to column 2, line 12) a method for determining at least one characteristic of said contents of a fluid conduit, said method comprising directing radiated light towards said predetermined location whereby when said fluid conduit is present at said predetermined location said radiated light passes in a direction through said conduit, detecting a first portion of said radiated light passing through said fluid conduit and detecting a second portion of said radiated light which is reflected by said fluid conduit. The method of Jensen lacks determining the presence of the fluid conduit at a predetermined location. Crouse *et al.* teach (column 3, lines 34-36; column 6, line 65 to column 7, line 12) that a second sensor can be used to detect light reflected (*i.e.*, refracted) by the presence of a tube in order to verify that the tubing is properly situated. Therefore it would have been obvious to one having ordinary skill in the art that the second sensor (40) in the method of Jensen can be used to detect light reflected (*i.e.*, refracted 46) by the presence of a tube (28), in order to verify that the tubing is properly situated as taught by Crouse *et al.*

Allowable Subject Matter

11. Claim 31 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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The following is a statement of reasons for the indication of allowable subject matter: the instant application is deemed to be directed to a nonobvious improvement over the invention patented in US Patent 4,366,384. The improvement comprises in combination with other recited elements, that when said first signal is at a predetermined high level and said second signal is at a predetermined low level, said comparing means determines that said fluid conduit is not present at said predetermined location, when said first signal is at a predetermined medium level and said second signal is at a predetermined high level, said comparing means determines that said fluid conduit is present at said predetermined location and said fluid is not present in said fluid conduit, when said first signal is at a predetermined high level and said second signal is at a predetermined high level, said comparing means determines that said fluid conduit is present at said predetermined location and said fluid comprises a transparent fluid, when said first signal is at a predetermined low level and said second signal is at a predetermined high level, said comparing means determines that said fluid conduit is present at said predetermined location and said fluid comprises an opaque fluid, when said first signal is at a predetermined low level and pulses at a predetermined high level, and said second signal is at a predetermined high level, said comparing means determines that said fluid conduit is present at said predetermined location and said fluid comprises an opaque fluid containing air bubbles, and when said first signal is at a predetermined low or medium level and said second signal is at a predetermined low level, said comparing means determines that an error condition exists as recited in claim 31.

Response to Arguments

12. Applicant's arguments filed 31 December 2002 have been fully considered but they are not persuasive.

Applicant argues that claims 15-31 directly or indirectly depend from new claim 32. Examiner respectfully disagrees. Claims 15-29 depend from cancelled claim 14 and claim 31 depend from claim 30. Thus applicant's arguments are not persuasive.

Applicant's arguments with respect to claim 32 have been considered but are moot in view of the new ground(s) of rejection. Moreover, it is noted that while applicant argues that the preamble of canceled claim 14 has been added to the body of new claim 32, it appears that the body of new claim 32 is substantially identical with the body of canceled claim 14.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shun Lee whose telephone number is (703) 308-4860. The examiner can normally be reached on Tuesday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Porta can be reached on (703) 308-4852. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9318 for regular communications and (703) 872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

SL
March 7, 2003


DAVID PORTA
SUPERVISORY PATENT EXAMINER
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